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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/366,441
Filing Date: August 03, 1999
Appellant(s): CAMPBELL ET AL.

Robert C. Kowert
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the Reply Brief filed April 25, 2005 and supplements the Examiner's Answer mailed February 22, 2005.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the real party in interest is contained in the brief and states no other appeals or interferences are known which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(3) Status of Claims

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-6.

Claims 7-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-45 been canceled.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-6 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,783,740	Tawarayama et al.	7-1998
EP 0543544	Takashi	6-1992

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims **1-6** are rejected under 35 U.S.C. 102(b) as being anticipated by Tawarayama et al. (USPN 5,783,740).

Tawarayama discloses an analytical system for monitoring trace elements in a liquid sample. The apparatus comprises a first sample introduction unit (fig. 1, ref. 2 and 203; col. 4, lines 45-59), a second sample introduction unit (fig. 1, ref. 4 and 406; col. 5, lines 22-47); a sensor (fig. 1, ref. 7) configured to selectively (control unit (9)) receive a first and second sample flow wherein the sensor measures the concentration of a chemical interest (phosphorus and nitrogen) of each sample flow (fig. 2, col. 6, lines 56- col. 7, line 34). A control unit (8) controls all operations of this system, which include; constant flow rate (col. 3, lines 2-5); a purging system for cleaning the insides of the flow passage (col. 6, lines 1-6). (col. 3, lines 6-65).

Claims **1-5** are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0543544 ('544).

EP 544 discloses an apparatus for analyzing a liquid specimen that comprises multiple chemical diluting fluid holding vessels (c1-c5); a sample valve (11) which allows for switching between sample dilution stages and sample analysis; a flow metering passage (page 2, lines 18-19); a control means for controlling all operations of the apparatus (page 3, lines 19-21); a purging line for cleaning the passages (page 3, lines 55-56); a detector (sensor) for analyzing a sample for mean red corpuscular hemoglobin

concentration (page 4, lines 40-54 ; claims 1-7); a work load setting for predetermined characteristics of a sample (page 5, lines 1-27).

Claims 7-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or fairly suggest sensor that measures a first sample attribute value for a first sample and a second sample attribute value for a second sample, then a control system configured to receive the attribute from first sample and the second sample and displays both on a display unit.

(11) Response to Argument

Below are arguments in the Examiner Answer dated 2/22/05.

Appellant argues, "Tawarayama does not teach a sensor configured to **selectively receive** a first sample flow of a first chemical **mixture from a first chemical vessel** and to selectively receive a second sample flow of second chemical mixture from a second chemical vessel.... Tawarayama teaches how a sample from single source 202 is prepared for testing and then tested by a detection unit." Examiner is relying on 202 being the first sample, and the second sample is created in the second sample introduction unit. The decomposed sample is introduced in the second sample

loop, thus creating a second sample out of the first sample. Appellant points out that the sample mixture is then heated and decomposed by thermostat 303 in pre- treatment unit 3 (col. 4, line 60 - col. 5, line 21). The sample mixture is then injected by the second sample introduction unit 4 into coloring unit 6 where it is mixed with coloring reagent 602 (col. 5, lines 22-52). Examiner recognizes there is only a single sample source as the Appellant is pointing out, but **two samples flows** and **two separate samples** (first chemical mixing vessel (sample loop 204), second chemical mixing vessel (second sample loop 412)) are created by one sample source. Examiner would also like to point out to col. 5, lines 5-7 "Meanwhile, another sample is similarly introduced into a suitable tube, for example the tube 311 in the thermostat 303 by switching the valves 301 and 302 to be decomposed by heating. In this way, other samples are sequentially introduced into the tubes 312 to 315 until the decomposition of the sample in the tube 310 is completed. Regarding the selectively receiving limitation, Tawarayama discloses that the sample can be either introduced into the detection unit or to a discharge (waste), this is selectively receiving a sample. Therefore Tawarayama teaches each limitation of claim 1.

Appellant argues, Tawarayama does not teach displaying the samples attributes. Examiner believes that a colorimetric reaction is a type of display (optical result, absorbance) of the results from the phosphorus and nitrogen tests performed on the samples.

Appellant argues, EP 544 does not teach a sensor configured to selectively receive a first sample flow of a first chemical mixture from a first chemical vessel and to

selectively receive a second sample flow of second chemical mixture from a second chemical vessel." The Examiner is relying on the metering of the flow of the sample fluids for the sensor limitation. Claim 1 of the instant application, only recites a sensor, the function or specific analysis the sensor performs is not specified. So when the claim is read to is broadest scope, that includes measuring the flow of a sample (page 2, line 118-19).

Start of Supplemental Arguments *(in response to Reply Brief of April 25, 2005)*

Appellants note that the Examiner failed to provided any rebuttal in the Examiner's Answer in regard to Appellants' arguments in the Appeal Brief in regard to claim 6.

Claim 6 requires a purge fluid supply (406) and a supply distribution system to selectively transport a purge fluid from the supply to the sensor. Tawarayama discloses in col. 6 ,lines 1-6 a purge supply (406) is distributed for cleaning the inside of the flow passages 5 and the flow cell of the detection unit 7. Claim 6 further requires a drain configured to receive fluids. The Examiner would like to point out that after the detection unit 7 is a drain (discharge in the figures) for discharging the fluids after the detection unit. Claim 6 further requires a distribution system configured to transport purge fluids (406) from said sensor to said drain (detection unit to discharge), the system further configured to selectively transport a first fluid flow from the sensor to the first chemical vessel **or** to the drain (the later being the case of Tawarayama), the system further configured to selectively transport the second sample flow from the

sensor to the second chemical vessel **or** to the drain (the later being the case of Tawarayama). Therefore each limitation in claim 6 is anticipated by Tawarayama.

With regards to claim 2 in view of EP 544, Appellant argues, "in his Answer, the Examiner states that he is relying on the metering function of EP 544 to teach the sensor. The sampling valve of EP 544 cannot possibly be interpreted as a concentration sensor configured to measure concentration of a chemical within a sample flow." The Appellant misinterpreted the meaning of the above arguments. As seen in page 4, lines 40-45, EP 544 discloses metering passages for providing samples to the sensors for measuring eight characteristics of CBC, RBC, HGB, HCT,MCV, MCH, MCHC and PLT. The metering passages only provide passage of the fluids and not the concentration determinations of the samples. After the metering passages are the sensors for measuring the concentrations of the eight characteristics. It is also seen on page 4 of the Examiner's Answer in the last line, the Examiner refers to a detector (sensor) for analyzing a sample for mean red corpuscular hemoglobin concentration. This has always been the Examiner's position with respect to the sensor and the concentration determination of claim 2 throughout prosecution.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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July 18, 2005

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